

LERNER & ROWE, P.C.
Chad Schatz, Esq. SBN 027212
2701 E. Camelback Rd., Ste. 140
Phoenix, AZ 85016
Telephone: (602) 977-1900
Fax: (602) 977-1901
cschatz@lernerandrowe.com
minute_entries@lernerandrowe.com
Attorney for Plaintiff

**IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE**

LINDA KIMBLE, individually.

Plaintiff,

vs.

SMITH'S FOOD & DRUG CENTERS, INC.
d/b/a FRY'S FOOD STORES, a domestic
corporation, JOHN DOES I-X and JANE DOES I-
X, individually and/or as husband and wife;
BLACK CORPORATIONS I-X and WHITE
LIMITED PARTNERSHIPS I-X,

Defendants.

No. CV2019-_____

COMPLAINT

(Tort/Non Motor Vehicle -
Premises Liability; Negligence)

Plaintiff, by and through undersigned counsel, for her Complaint hereby allege as follows:

JURISDICTIONAL ALLEGATIONS

1. The events that form the basis for this complaint occurred within Cochise County, Arizona and venue in this court is proper pursuant to A.R.S. § 12-401.
2. The damages sought in this matter are within the original jurisdiction of this court.

PARTIES

3. Plaintiff resides in Sierra Vista, Cochise County, Arizona.
4. Defendant Smith's Food and Drug Centers, Inc. d/b/a Fry's Food Stores is a domestic corporation licensed to do business in Arizona.

5. Defendants John Does I-X and Jane Does I-X are individuals and/or married couples whose identities are presently unknown to Plaintiff, and so are sued under an alias. The true names of Defendants John and Jane Does will be substituted when the true names are learned. Defendants John and Jane Does, if married, at all times relevant hereto acted for and on behalf of their marital community.
6. Defendants Black Corporations I-X and White Limited Partnerships I-X are corporations, limited partnerships, limited liability concerns, or other business entities, either chartered within Arizona or authorized to do business in the State of Arizona, but whose identities are presently unknown to Plaintiff, and so are sued under an alias. The true names of Defendants Black and White Corporations will be substituted when learned.

GENERAL ALLEGATIONS

7. Plaintiff realleges and incorporates herein by this reference the allegations in Paragraphs 1 through 6 of her Complaint as though expressly set forth herein.
8. Defendants Smith's Food and Drug Centers, Inc own, operate, and maintain Fry's store located at 4351 E. Highway 90, Sierra Vista, Arizona (hereinafter referred to as "the store").
9. On or about January 14, 2017, Plaintiff was a public invitee of the store.
10. While walking into the store, Plaintiff tripped on an uneven curb surface directly outside the entrance.
11. Defendants caused Plaintiff to suffer harm in an amount qualifying this matter as a Tier 1 case.

COUNT I – PREMISES LIABILITY

12. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through 11 of her Complaint as though expressly set forth herein.
13. Defendants have a non-delegable duty to exercise reasonable care for the safety of public invitees within the store.
14. Defendants were in the position to ensure that safety procedures for the protection of public invitees visiting the store were initiated and then followed by Defendants.
15. Defendants owed a duty of care to public invitees to inspect, maintain and make the store safe.
16. Defendants had a duty to know, or in the exercise of due care to know, of an unreasonably dangerous condition on the property, to wit, the hazardous curb outside the front door of the store.
17. Defendants had a duty of care to public invitees, including Plaintiff, to use reasonable care to warn about, or remedy, the unreasonably dangerous condition, to wit, the hazardous curb outside the front door of the store.
18. Defendants were negligent for not inspecting the curb of the store for hazards, and Defendants were negligent for not removing the hazards, to wit, the hazardous curb outside the front door of the store.
19. Defendants were negligent for failing to adequately warn Plaintiff and other public invitees of the dangerous condition at the store, to wit, the hazardous curb outside the front door of the store.

1 20. Defendants breached their duty of care to Plaintiff and other public invitees and as
2 a result, Plaintiff was injured when she tripped on the hazardous curb outside the
3 front door of the store.
4

5 21. As a result of the Defendants' negligence, Plaintiff was subjected to pain and
6 suffering, inconvenience, curtailment of her usual activities, loss of enjoyment of
7 life, great pain of body and mind, inconvenience, loss of enjoyment, and pain and
8 suffering in the future.
9

10 22. As a result of the Defendants' negligence, Plaintiff has incurred expenses for
11 medical treatment and expenses for related treatment and care as a result of
12 injuries sustained from this incident, and Plaintiff will continue to incur such
13 expenses in the future.
14

15 **COUNT II – GROSS NEGLIGENCE**

16 23. Plaintiff realleges and incorporates herein by this reference Paragraphs 1 through
17 22 of her Complaint as though expressly set forth herein.
18

19 24. On or about January 14, 2017, Plaintiff was a public invitee of the store.

20 25. While walking into the store, Plaintiff tripped on an uneven curb surface directly
21 outside the front door, fell and was injured.
22

23 26. Upon information and belief, Plaintiff alleges Defendants were responsible for
24 ensuring that the entrance was safe and non-hazardous to public invitees.

25 27. Upon information and belief, Plaintiff alleges Defendants were responsible for
26 ensuring that the proper warning signs and/or safety procedures were in place in
27 order to warn public invitees of any potential hazard at the entrance of the store,
28

1 including but not limited to the uneven curb surface directly outside the front door.

2 28. Defendants' conduct created an unreasonable risk of bodily harm to Plaintiff and
3 other public invitees, as well as the high probability that substantial harm would
4 result from Defendants' conduct.
5

6 29. Defendants' conduct constitutes gross negligence.
7

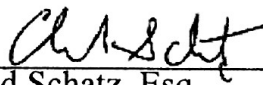
8 **WHEREFORE**, Plaintiff pray for Judgment against Defendants, and all of them, as
9 follows:

- 10 A. For general damages;
11 B. For special damages;
12 C. For Plaintiff's expenses incurred for past medical care and treatment of Plaintiff's
13 injuries for future medical treatment expenses;
14 D. For Plaintiff's expenses driving to doctor appointments;
15 E. For Plaintiff's past and future lose wages;
16 F. For reasonable attorney's fees and costs;
17 G. For interest at the statutory rate; and
18 H. For such other and further relief as this Court deems just and proper.
19
20

21 **RESPECTFULLY SUBMITTED** this 11th day of January, 2019.
22

23 **LERNER & ROWE, P.C.,**
24

25 By

26 
Chad Schatz, Esq.
27 2701 E. Camelback Road, Ste. 140
Phoenix, Arizona 85016
28 *Attorney for Plaintiff*